

Paul A. Kampmeier, WSBA #31560
KAMPMEIER & KNUTSEN PLLC
811 First Avenue, Suite 468
Seattle, Washington 98104
Telephone: (206) 858-6983
Email: paul@kampmeierknutsen.com

Attorneys for Plaintiff Olympic Forest Coalition

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OLYMPIC FOREST COALITION, a
Washington non-profit corporation,

Plaintiff,

v.

DULCICH, INCORPORATED, d/b/a
PACIFIC SEAFOOD GROUP, a foreign
corporation,

Defendant.

Case No.

COMPLAINT

I. INTRODUCTION.

1. This action is a citizen suit brought under Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Plaintiff Olympic Forest Coalition (hereinafter “OFCO”) alleges Defendant Dulcich, Incorporated (hereinafter “Dulcich” or “Defendant”) is a co-owner and co-operator of a shellfish hatchery that is located at or near 1601 Linger Longer Road, Quilcene, Washington 98376 (“the Facility”), and that Dulcich is violating Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), each and every day by discharging pollutants to waters of the United States without authorization of a National Pollutant Discharge Elimination System (“NPDES”) permit.

1 2. The operators of the Facility grow algae and rear shellfish larvae in large tanks of
2 water at the Facility. During those processes, the operators, the algae, and the shellfish larvae all
3 add materials and pollutants to the water. The Facility then discharges that water, those addi-
4 tional materials, and other pollutants to Quilcene Bay and a small stream at the Facility via pipes,
5 ditches, channels, and other conveyances. All discharges of pollutants from the Facility violate
6 the Clean Water Act (“CWA” or “Act”) because they are not authorized by a NPDES permit.
7 OFCO sued one owner or operator of the Facility in 2016 and that lawsuit is ongoing. OFCO is
8 now suing Defendant Dulcich in this lawsuit because evidence demonstrates that Dulcich is an
9 owner and operator of the Facility that is wholly or partially responsible for CWA compliance at
10 the Facility. OFCO seeks declaratory and injunctive relief, the imposition of civil penalties, and
11 an award of costs, including attorneys’ and expert witness fees, for Defendant’s repeated and on-
12 going violations of the Clean Water Act.
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14

15 **II. JURISDICTION AND VENUE.**

16 3. This Court has jurisdiction pursuant to 33 U.S.C. § 1365 (CWA citizen suit provi-
17 sion) and 28 U.S.C. § 1331 (federal question). Defendant is in ongoing violation of an “effluent
18 standard or limitation” as defined by Section 505 of the Act, 33 U.S.C. § 1365. The requested re-
19 lief is proper under 28 U.S.C. §§ 2201 and 2202 and 33 U.S.C. § 1365.
20

21 4. OFCO has satisfied the jurisdictional requirements for bringing this suit. Under
22 Section 505(b)(1)(A) of the Act, 33 U.S.C. § 1365(b)(1)(A), by certified letter dated and post-
23 marked May 25, 2022, OFCO notified Defendant and its registered agents and authorized repre-
24 sentatives of Defendant’s alleged violations of the Act and of OFCO’s intent to sue for those vio-
25 lations (“Notice Letter”). OFCO also notified the Administrator of the EPA, the Administrator of
26 EPA Region 10, and the Director of the Washington Department of Ecology of its intent to sue
27 Defendant by mailing a copy of the Notice Letter to those officials on May 25, 2022. A copy of
28

1 the Notice Letter is attached to this complaint as Exhibit 1 and the allegations therein are hereby
2 incorporated by reference.

3 5. More than sixty days have passed since OFCO mailed the Notice Letter and the
4 violations complained of are continuing or reasonably likely to continue to occur. Neither the
5 EPA nor the Washington Department of Ecology (“Ecology”) has commenced any action consti-
6 tuting diligent prosecution to redress these violations. Defendant is in ongoing violation of an ef-
7 fluent standard or limitation and the Clean Water Act.
8

9 6. Venue is appropriate in this District under Section 505(c)(1) of the Act, 33 U.S.C.
10 § 1365(c)(1), because the source of the violations complained of is located in this District, in Jef-
11 ferson County, Washington.
12

13 7. A copy of this Complaint will be served on the Attorney General of the United
14 States, the Administrator of the EPA, and the Administrator of EPA Region 10, as required by 33
15 U.S.C. § 1365(c)(3) and 40 C.F.R. § 135.4.
16

17 **III. PARTIES.**

18 8. Plaintiff Olympic Forest Coalition is a membership organization suing on behalf
19 of itself and its members. OFCO is a non-profit corporation organized and existing under the
20 laws of the State of Washington. OFCO maintains its principal place of business in Jefferson
21 County, Washington. The mission of OFCO is to protect and conserve the environment and natu-
22 ral resources of the Olympic Peninsula and the Pacific Northwest. Since 2002, the staff, volun-
23 teers, and members of OFCO have advocated for cleaner water and air and for the preservation
24 of public lands and wildlife habitat on and around the Olympic Peninsula.

25 9. OFCO and its members have a particular interest in, and derive aesthetic, recrea-
26 tional, and other benefits from, Quilcene Bay, Puget Sound, and the other rivers, creeks, bays,
27 and canals of the Olympic Peninsula, including the aquatic and terrestrial species that use and
28

1 rely on those waters. OFCO's members use Quilcene Bay, Puget Sound, and other waters and
2 adjacent lands downstream from the Facility's discharges for recreational and other activities,
3 including boating, scientific expeditions, photographing birds and animals, nature watching, hik-
4 ing, fishing, and aesthetic, spiritual, and recreational enjoyment. One or more OFCO members
5 also use a marina that is just south of and adjacent to the Facility. OFCO members routinely use
6 the area of Quilcene Bay near the Facility for boating, water quality monitoring, bird and wildlife
7 watching, and other activities, all of which are impaired by the alleged discharges and the pol-
8 luted state of Quilcene Bay. Additionally, many other members of OFCO use Quilcene Bay or
9 Puget Sound near or downstream from the Facility and are also adversely impacted by the al-
10 leged discharges of pollutants. OFCO and its members intend to continue all of these activities
11 into the future.
12

13
14 10. OFCO has standing to bring this lawsuit. OFCO and its members are "citizens" as
15 defined by Section 505(g) of the Act, 33 U.S.C. § 1365(g). OFCO has at least one member who
16 is injured by the Facility's discharges of pollutants and Defendant's violations of the CWA. Rec-
17 reational, economic, aesthetic, conservation, health, and/or other interests of OFCO and its mem-
18 bers have been, are being, and will be adversely affected by Defendant's violations of the Clean
19 Water Act and the unauthorized discharges of pollutants to Quilcene Bay, the small stream at the
20 Facility, and Puget Sound. Plaintiff's and its members' interests in Quilcene Bay, the small
21 stream at the Facility, Puget Sound, and the Olympic Peninsula are diminished by their polluted
22 state and by Defendant's illegal discharges of pollutants and other violations of the CWA. The
23 relief sought in this lawsuit can redress the injuries to OFCO's interests.
24

25 11. Defendant Dulcich, Incorporated is a corporation organized and existing under the
26 laws of the State of Oregon. Dulcich is authorized to conduct business in Washington State. Dul-
27 cich conducts business in Washington State. Dulcich conducts business in Washington State as
28

1 Pacific Seafood Group. Pacific Seafood Group is a trade name or assumed business name for
2 Dulcich. Dulcich owns the Facility. Dulcich operates the Facility. Dulcich is one of the operators
3 of the Facility. Dulcich owns a company called Pacific Shellfish – Quilcene, LLC. Dulcich oper-
4 ates a company called Pacific Shellfish – Quilcene, LLC. Dulcich controls a company called Pa-
5 cific Shellfish – Quilcene, LLC. Pacific Shellfish – Quilcene, LLC is a wholly-owned subsidiary
6 of Dulcich, Incorporated. Pacific Shellfish – Quilcene, LLC is an operator of the Facility. Pacific
7 Shellfish – Quilcene, LLC is an owner of the Facility.

9 IV. LEGAL BACKGROUND.

10 12. Congress enacted the Clean Water Act to “restore and maintain the chemical,
11 physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

12 13. As relevant here, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits “the
13 discharge of any pollutant by any person” unless such discharge is authorized by an NPDES per-
14 mit issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.

15 14. The Act defines the term “discharge of a pollutant” to mean, in part, “any addition
16 of any pollutant to navigable waters from any point source...” 33 U.S.C. § 1362(12).

17 15. As relevant here, the Act defines the term “point source” to mean, in part, “any
18 discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, chan-
19 nel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding
20 operation, or vessel or other floating craft, from which pollutants are or may be discharged. * *
21 *.” 33 U.S.C. § 1362(14).

22 16. As relevant here, the Act defines the term “pollutant” to mean, in part, “dredged
23 spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical
24 wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock,
25
26
27
28

1 sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. * * *.”
2 33 U.S.C. § 1362(6).

3 17. Neither the Act nor its implementing regulations define the term “addition”; how-
4 ever, one court found that “addition” means the introduction of a pollutant into navigable waters
5 from any place outside the particular water body. Catskill Mountains Chapter of Trout Unlim-
6 ited, Inc. v. City of New York, 273 F.3d 481, 491 (2nd Cir. 2001).

7
8 18. The Act’s prohibition on discharging pollutants from point sources applies
9 broadly. The Act defines the term “navigable waters” to mean “the waters of the United States,
10 including the territorial seas.” 33 U.S.C. § 1362(7). And the Act defines the term “person” to
11 mean “an individual, corporation, partnership, association, State, municipality, commission, or
12 political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

13
14 19. The Act does not exempt shellfish hatcheries from the NPDES permit require-
15 ment. Point-source discharges of pollutants from shellfish hatcheries are illegal unless authorized
16 by an NPDES permit. 33 U.S.C. § 1311(a).

17 20. Section 402(a) of the Act authorizes EPA to issue NPDES permits authorizing
18 discharges of pollutants. 33 U.S.C. §1342(a). EPA may delegate administration of the NPDES
19 permit program to states with regulatory programs meeting applicable criteria. 33 U.S.C. §
20 1342(b); 40 C.F.R. Part 123. The State of Washington has a federally approved NPDES program
21 administered by Ecology; accordingly, Ecology may issue NPDES permits authorizing dis-
22 charges of pollutants in the state of Washington.

23
24 21. Compliance with the terms and conditions of an NPDES permit is deemed com-
25 pliance with the general discharge prohibition in Section 301(a). 33 U.S.C. § 1342(k). Discharg-
26 ing pollutants without the required NPDES permit, or in violation of a NPDES permit, is grounds
27 for a citizen enforcement action. 33 U.S.C. §§ 1365(a)(1), (f).

V. FACTS.

A. The Facility Discharges Pollutants to Waters of the United States Every Day Without Authorization of an NPDES Permit.

22. The Facility is on land and adjacent to Quilcene Bay, which is part of Hood Canal and Puget Sound. There is a small stream at the Facility that empties into Quilcene Bay. The primary business at the Facility is growing and selling shellfish larvae.

23. To grow the food it feeds to larvae at its Facility, the operators of the Facility add heat, nutrients, carbon dioxide and oxygen to a solution containing phytoplankton. The operators of the Facility then add the phytoplankton solution to waters at the Facility to nourish growing shellfish larvae. The phytoplankton's natural processes add oxygen to waters at the Facility.

24. The operators of the Facility add other materials to the water used to grow shellfish larvae in the Facility. On information and belief, to control pH the operators of the Facility add sodium carbonate or other materials to the water used to grow shellfish larvae at the Facility. On information and belief, to control microorganisms the operators of the Facility add antibiotics or other materials to the water used to grow shellfish larvae at the Facility. On information and belief, to facilitate shellfish reproduction the operators of the Facility add heat to the water used to grow shellfish larvae at the facility. To sterilize or otherwise clean tanks, equipment, or water used to grow phytoplankton, the operators of the Facility add sodium hypochlorite and/or other chlorine-based chemicals to tanks or waters at the Facility.

25. The operators of the Facility add the water used to grow shellfish larvae at the Facility, as well as the materials the operators of the Facility and the shellfish add to tanks or those waters, to Quilcene Bay, the small stream at the Facility, and/or Puget Sound. Quilcene Bay, the small stream at the Facility, Hood Canal, and Puget Sound are "navigable waters" or "waters of the United States" as defined by the CWA and its implementing regulations.

1 26. The operators of the Facility use numerous pipes, ditches, channels, and other dis-
2 cernible, confined and discrete conveyances to discharge pollutants from its Facility to the beach
3 that is at or adjacent to the facility and that drains to Quilcene Bay, to the stream at the Facility,
4 and to Quilcene Bay and Puget Sound. The point sources at the Facility include but are not lim-
5 ited to Outfalls 1 through 5 that are described in Dulcich's June 2021 NPDES permit application
6 to Ecology; pipes that discharge onto the beach and into Quilcene Bay; the man-made and
7 eroded channels on the beach that is at or adjacent to the Facility and that discharge into
8 Quilcene Bay; pipes or channels that discharge into the unnamed stream at the Facility and then
9 to Quilcene Bay; and the Facility's intake pipes, which discharge back into Quilcene Bay when
10 the facility back-flushes those pipes or related filters. The Notice Letter identifies some of the lo-
11 cations of these point sources. See Exhibit 1.
12

13 27. Effluent discharged from the point sources at the facility contains pollutants in-
14 cluding but not limited to chlorine, total suspended solids, nitrogen, phosphorous, ammonia, ni-
15 trites, nitrates, nutrients, Chlorophyll a, Phaeophytin a, heat, pH, salinity, dissolved oxygen, bio-
16 logical wastes, metals, food wastes, chemicals used for shellfish larvae rearing or tank cleaning
17 or other purposes, concentrated total suspended solids, antibiotics and drugs and any residue of
18 those materials, and other pollutants including those described in Dulcich's June 2021 NPDES
19 permit application to Ecology. These and the other materials in the Facility's effluent constitute
20 chemical wastes, biological materials, heat, industrial waste, and other "pollutants" as defined by
21 the CWA.
22

23 28. OFCO members use the marina that is just south of Defendant's facility to access
24 Quilcene Bay by boat. At least one OFCO member regularly boats on Quilcene Bay, Dabob Bay,
25 Hood Canal, and other parts of Puget Sound. OFCO members can see the Facility and discharges
26 of effluent from the Facility from Quilcene Bay and from the properties immediately south of the
27 Facility.
28

1 Facility. OFCO members have watched the Facility discharge effluent from the Facility to
2 Quilcene Bay from pipes, ditches, and channels.

3 29. For many years OFCO members have regularly monitored water quality in
4 Quilcene Bay and Hood Canal. OFCO members have taken water quality samples where the Fa-
5 cility discharges to Quilcene Bay. Water quality samples taken by OFCO members in June and
6 cility discharges to Quilcene Bay. Water quality samples taken by OFCO members in June and
7 July 2014 indicate the Facility discharges chlorine to Quilcene Bay and Puget Sound.

8 30. After watching the Facility discharge to Quilcene Bay, and after becoming con-
9 vinced that effluent from the Facility is polluted, OFCO members worked for several years to re-
10 solve alleged pollution problems at the Facility. OFCO members met with, or attempted to meet
11 with, the owners or operators of the Facility to discuss ways to reduce pollution from the Facil-
12 ity. OFCO members also sought help from Ecology.

13 31. Because of OFCO's advocacy, the owners or operators of the Facility previously
14 hired a consultant—Rensel Associates Aquatic Sciences—to assess the effluent discharged from
15 the Facility. After sampling effluent from the facility, Rensel Associates Aquatic Sciences pro-
16 duced a report dated February 7, 2013 and entitled “Quilcene Bay Shellfish Hatchery Discharge
17 Study” (hereinafter “Rensel Report”). The Rensel Report confirms that the Facility uses pipes,
18 ditches, and channels to discharge effluent to Quilcene Bay. The Rensel Report documents point-
19 source discharges of pollutants from the facility to Quilcene Bay.
20

21 32. The Rensel Report confirms that effluent from the Facility contains pollutants, in-
22 cluding but not limited to total suspended solids, nitrogen, phosphorous, ammonia, nitrites, ni-
23 trates, Chlorophyll *a*, Phaeophytin *a*, heat, pH, salinity, and dissolved oxygen. For a variety of
24 materials, the Rensel Report compared the chemical content of the water drawn into the Facility
25 to the chemical content of the effluent leaving the facility. For dissolved inorganic nitrogen, total
26 suspended solids, Chlorophyll *a*, and Phaeophytin *a*, the Rensel Report found that the chemical
27
28

1 loading in individual samples of effluent from the Facility was usually higher than the chemical
2 loading in the water drawn into the Facility. For Total Nitrogen, Total Phosphorous, Soluble Re-
3 active Phosphorous, Ammonia Nitrogen, and Nitrate + Nitrite Nitrogen, the Rensel Report found
4 that the chemical loading in the effluent was *always* higher than the chemical loading in the wa-
5 ter drawn into the Facility. For example, as documented at pages 22-23 of the Rensel Report, ef-
6 fluent from the Facility contained 68%, 439%, 178%, 178%, 669%, and 549% of the ammonia
7 nitrogen found in the water drawn into the Facility. Depending on water pH and temperature,
8 ammonia nitrogen can be highly toxic to fish and other aquatic species.

10 33. In preparing the Rensel Report, Rensel Associates Aquatic Sciences did not sam-
11 ple all sources of effluent from the Facility. In preparing the Rensel Report, Rensel Associates
12 Aquatic Sciences did not sample for all pollutants that might be in effluent from the Facility. In
13 preparing the Rensel Report, Rensel Associates Aquatic Sciences did not test the Facility's efflu-
14 ent for chlorine.

16 34. Based on the Rensel Report and other evidence, OFCO sued Coast Seafoods
17 Company in 2016 for discharging pollutants from the Facility without authorization of an
18 NPDES permit. The U.S. District Court denied Coast Seafoods Company's motion to dismiss in
19 June 2016 and then certified that ruling for interlocutory review. The U.S. Court of Appeals for
20 the Ninth Circuit affirmed the District Court's ruling in March 2018. Notwithstanding those rul-
21 ings, Dulcich and the other operators of the Facility have intentionally violated the CWA each
22 and every day by discharging pollutants from the Facility without authorization of an NPDES
23 permit.

25 35. In November 2018, Coast Seafoods Company submitted NPDES permit applica-
26 tion materials to Ecology that acknowledged the company discharged pollutants to Quilcene Bay
27 from at least twenty-four outfalls, including pipes, ditches, channels.

1 36. In June 2021, Dulcich submitted an NPDES permit application to Ecology on be-
 2 half of Pacific Shellfish – Quilcene, LLC that acknowledged the Facility discharges pollutants to
 3 Quilcene Bay from at least five outfalls, including pipes, ditches, channels.

4 B. Defendant Dulcich Controls NPDES Permitting and Clean Water Act Compliance at the
 5 Facility but Has Not Obtained an NPDES Permit for the Facility.

6 37. The Facility discharges pollutants to Quilcene Bay and the small stream at the Fa-
 7 cility every day, but neither Dulcich nor any other owner or operator of the Facility has obtained
 8 an NPDES permit authorizing discharges of pollutants from the Facility.

9 38. Dulcich is an operator of the Facility. Coast Seafoods Company’s November 29,
 10 2018, NPDES permit application lists Pacific Seafood Group in Clackamas, Oregon as an opera-
 11 tor of the Facility. Similarly, Pacific Seafood Group’s June 2021 NPDES permit application lists
 12 Pacific Seafood Group in Clackamas, Oregon as an operator of the Facility.

13 39. Dulcich is wholly or partially responsible for NPDES permitting for the Facility.
 14 On September 9, 2021, Laura Niewolny, an employee of Ecology, emailed Miranda Reis, an em-
 15 ployee of Dulcich, seeking clarification regarding who the responsible officials would be for
 16 NPDES permitting of the Facility. In a September 17, 2021 email back to Laura Niewolny, Mi-
 17 randa Reis listed Jon Steinman as the “Responsible Party” and listed his address as 16797 SE
 18 130th Avenue, Clackamas, Oregon 97015. In that same September 17, 2021 email to Laura Nie-
 19 wolny, Miranda Reis listed the “Legally Responsible Party” as Tony Dal Ponte at Pacific Sea-
 20 food Group and listed his address as 16797 SE 130th Avenue, Clackamas, Oregon 97015. In that
 21 same September 17, 2021 email to Laura Niewolny, Miranda Reis listed Amy Wentworth as the
 22 “Delegated Signer” and listed her address as 16797 SE 130th Avenue, Clackamas, Oregon
 23 97015. In that same September 17, 2021 email to Laura Niewolny, Miranda Reis listed Miranda
 24 Reis as the “Regulatory Official” and listed her address as 16797 SE 130th Avenue, Clackamas,
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1 Oregon 97015. The address of Dulcich, Incorporated's principal place of business in Oregon is
2 16797 SE 130th Avenue, Clackamas, Oregon 97015.

3 40. On September 17, 2021, Miranda Reis, Jon Steinman, Tony Dal Ponte, and Amy
4 Wentworth were all employees of Dulcich. On September 17, 2021, Miranda Reis, Jon Stein-
5 man, Tony Dal Ponte, and Amy Wentworth all utilized email addresses with an email server and
6 domain of "@pacseafood.com". "@pacseafood.com" is the email server and domain used by Pa-
7 cific Seafood Group. "@pacseafood.com" is the email server and domain used by Dulcich.

9 41. Dulcich is wholly or partially responsible for NPDES permit and CWA compli-
10 ance at the Facility. On September 20, 2021, Laura Niewolny of Ecology emailed Amy Went-
11 worth of Dulcich and asked her to "work towards submitting a delegation letter and your ESAF
12 to become a delegated signer for Pacific Shellfish – Quilcene, LLC similar to what you and Tony
13 (as legal responsible party) did with both the Boxley and Shelton fish hatcheries." The term
14 "ESAF" refers to an "Electronic Signature Agreement Form" (hereinafter "ESAF"), which is an
15 instrument a responsible corporate official can use to delegate certain NPDES permit compliance
16 responsibilities to another person. Also on September 20, 2021, Amy Wentworth emailed back to
17 Laura Niewolny and stated: "Hi Laurie, yes I can absolutely do that for our Quilcene facility. I
18 already have the ESAF form, so I'll get it signed and mailed in. Thanks[.]" Ms. Wentworth's
19 September 20, 2021, email to Laura Niewolny includes a signature block that identifies Ms.
20 Wentworth as the Director of Environmental, Health, & Safety for Pacific Seafood Group in
21 Clackamas, Oregon.

24 42. By letter dated September 30, 2021, Anthony Dal Ponte wrote to Morgan Dorner
25 at Ecology, requesting that Ecology designate Amy Wentworth as an "authorized representative"
26 with "signing and administrative privileges" for the Facility. Mr. Dal Ponte wrote the September
27

30, 2021 letter to Morgan Dorner in his “capacity as Vice President, General Counsel, and Assistant Corporate Secretary of Dulcich, Inc. dba Pacific Seafood Group, on behalf of its wholly-owned subsidiary Pacific Shellfish –Quilcene, LLC.” Mr. Dal Ponte’s September 30, 2021, letter to Morgan Dorner states: “Amy Wentworth, Director of EHS, is responsible for managing all environmental compliance functions across our family of companies and is the person best suited to gather, evaluate, and submit compliance information in connection with each site.”

43. On or around September 30, 2021, Anthony Dal Ponte signed an ESAF that was submitted to Ecology for the Facility. Mr. Dal Ponte signed the ESAF as the “permittee” and “Responsible Official” for NPDES permitting for the Facility. In doing so, Mr. Dal Ponte acknowledged that, at the time of signing the ESAF, Amy Wentworth worked for or at “Pacific Seafood” and that she was at that time “authorized to submit documents on the site’s/facility’s behalf.” For Ms. Wentworth’s contact information, the ESAF listed a Clackamas, Oregon address, an Oregon phone number, and an email using the “@pacseafood.com” email server and domain. With checkmarks in certain boxes on the form, the ESAF identified Ms. Wentworth as the “Facility Signer” and the “Facility Coordinator” for the Facility. By signing the ESAF as the permittee and responsible official, Mr. Dal Ponte acknowledged that Dulcich is an operator of the Facility.

44. As of the date of filing of this complaint, Ecology has not issued an NPDES permit authorizing the discharges of pollutants from the Facility that are the subject of this lawsuit. Discharges of pollutants from the Facility are ongoing, illegal, and in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and an effluent standard or limitation under the Act, because they are occurring without authorization of an NPDES permit.

45. Defendant’s unpermitted discharges of pollutants degrade the environment and the water quality of Quilcene Bay, the small stream at the Facility, and Puget Sound. Defendant’s

1 unpermitted discharges of pollutants foul the water in and around the marina that is near the Fa-
2 cility. Defendant's unpermitted discharges of pollutants also foul the beach adjacent to Defend-
3 ant's Facility and other nearby property.

4 46. Defendant's unpermitted discharges of pollutants were avoidable had Defendant
5 been diligent in overseeing and controlling operations, maintenance, monitoring, and compliance
6 with the law.

7 47. Defendant has benefited economically from its unpermitted discharges of pollu-
8 tants.

9 48. Any and all additional violations of the Clean Water Act by Defendant that occur
10 or are discovered after those described in the Notice Letter but before a final decision in this ac-
11 tion are continuing violations subject to this complaint.

12 49. Without the imposition of appropriate civil penalties and/or the issuance of an in-
13 junction and other relief, Defendant is likely to continue to violate the Clean Water Act to the
14 further injury of Plaintiff, its members, and others.

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16
17 **VI. CAUSE OF ACTION.**

18 50. Plaintiff hereby alleges and incorporates by reference all of the preceding para-
19 graphs.

20 51. Defendant Dulcich, Incorporated is a "person" within the meaning of Section
21 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and is subject to suit under the Act's citizen
22 suit provision, 33 U.S.C. § 1365.

23 52. Defendant Dulcich, Incorporated has violated and is violating Section 301(a) of
24 the Clean Water Act, 33 U.S.C. § 1311(a), and an "effluent standard or limitation" as that term is
25 defined by Section 505 of the Act, 33 U.S.C. § 1365, by adding pollutants from point sources at
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1 the Facility to Quilcene Bay, the small stream at the Facility, and/or Puget Sound without author-
2 ization of an NPDES permit. These violations have occurred each and every day since July 7,
3 2017, and are ongoing. These violations are described in the Notice Letter, which is hereby in-
4 corporated by reference as if fully set forth herein. See Exhibit 1.

5
6 **VII. RELIEF REQUESTED.**

7 WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

8 A. Declare that Defendant has violated and continues to be in violation of the Clean
9 Water Act, as alleged herein;

10 B. Issue injunctive relief requiring Defendant to comply with the CWA, obtain an
11 NPDES permit authorizing discharges of pollutants from Defendant's Quilcene Facility, or to
12 cease making such discharges;

13 C. Issue injunctive relief requiring Defendant to remediate the environmental dam-
14 age and ongoing impacts resulting from its illegal discharges of pollutants to Quilcene Bay, the
15 small stream at the Facility, and Puget Sound;

16 D. Order Defendant to develop and comply with appropriate quality assurance proce-
17 dures to ensure future compliance with the Clean Water Act;

18 E. Order Defendant to provide Plaintiff with copies of all reports and other docu-
19 ments that Defendant submits to EPA or the Washington Department of Ecology regarding dis-
20 charges of pollutants from the Facility, at the time the reports or documents are submitted to
21 those authorities, for two years after completion of this case;

22 F. Assess civil penalties against Defendant, as authorized by Section 309(d) of the
23 Act, 33 U.S.C. § 1319(d);

24 G. Award Plaintiff its litigation expenses, including costs and reasonable attorneys'
25 and expert witness fees, as authorized by Section 505(d) of the Act, 33 U.S.C. § 1365(d); and
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1 H. Award such other relief as this Court deems just and appropriate.

2 RESPECTFULLY SUBMITTED this 6th day of September 2022.

3 KAMPMEIER & KNUTSEN, PLLC

4 By: s/ Paul A. Kampmeier
5 Paul A. Kampmeier, WSBA #31560
6 811 First Avenue, Suite 468
7 Seattle, Washington 98104
8 Tel: (206) 858-6983
9 paul@kampmeierknutsen.com

10 *Attorneys for Plaintiff Olympic Forest Coalition*

Exhibit 1

KAMPMEIER & KNUTSEN PLLC

ATTORNEYS AT LAW

PAUL A. KAMPMEIER
Licensed in Washington
206.858.6983
paul@kampmeierknutsen.com

May 25, 2022

Via Certified Mail - Return Receipt Requested

Managing Agent
Pacific Seafood Group
16797 SE 130th Avenue
Clackamas, Oregon 97015

Managing Agent
Pacific Seafood Group
1601 Linger Longer Road
Quilcene, Washington 98376

Managing Agent
Dulcich, Incorporated
16797 SE 130th Avenue
Clackamas, Oregon 97015

Managing Agent
Dulcich, Incorporated
12628 SE Jennifer Street
Clackamas, Oregon 97015

Re: Notice of Intent to File Suit under the Clean Water Act.

Dear Managing Agents:

This letter provides Dulcich, Incorporated and Pacific Seafood Group (hereinafter collectively referred to as “Pacific Seafood”) with sixty days’ notice of the Olympic Forest Coalition’s intent to file a citizen lawsuit against them under Section 505 of the Clean Water Act, 33 U.S.C. § 1365, for the Clean Water Act violations alleged in this notice letter. The Olympic Forest Coalition (hereinafter “OFCO”) is a non-profit organization dedicated to protecting the natural environment of the Olympic Peninsula in Washington State. Kampmeier & Knutsen, PLLC represents OFCO in this matter and any response to this notice of intent to sue should be directed to us at the address below. This notice letter supplements but does not supersede the notice letter OFCO sent to Coast Seafoods Company in October 2015.

I. VIOLATIONS OF THE CLEAN WATER ACT.

Congress enacted the Clean Water Act in 1948 to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985. To make that happen, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits discharges of pollutants unless they are authorized by and in compliance with a National Pollutant Discharge Elimination System permit (hereinafter “NPDES permit”) issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. The Clean Water Act defines “discharge of a pollutant” to mean, in part, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

Pacific Seafood has violated and is violating Section 301(a) of the Clean Water Act, 33 U.S.C. §§ 1311(a), at the facility located at or near 1601 Linger Longer Road, Quilcene, Washington 98376 (hereinafter the “facility”), by discharging pollutants from point sources to Quilcene Bay, to a stream at the facility that is tributary to Quilcene Bay, and to Puget Sound without authorization of an NPDES permit. Pacific Seafood is in ongoing violation of an effluent standard or limitation under the Clean Water Act. *See* 33 U.S.C. § 1365(a), (f). These violations have occurred each and every day the facility operated since May 25, 2017. These violations are ongoing. And Pacific Seafood is among those responsible for violations of the Clean Water Act at the facility because Dulcich, Incorporated and/or Pacific Seafood Group are owners or operators of the facility.

Pacific Seafood uses numerous pipes, ditches, channels and other discernible, confined and discrete conveyances to discharge pollutants from its facility to the beach that is at or adjacent to the facility and that drains to Quilcene Bay, to the stream at the facility, and to Quilcene Bay and Puget Sound. The point sources at the facility include but are not limited to Outfalls 1 through 5 that are described in Pacific Seafood’s June 2021 NPDES permit application to the Washington State Department of Ecology; pipes that discharge onto the beach and into Quilcene Bay; the man-made and eroded channels on the beach that is at or adjacent to the facility and that discharge into Quilcene Bay; pipes or channels that discharge into the unnamed stream at the facility and then to Quilcene Bay; and the facility’s intake pipes, which discharge back into Quilcene Bay when the facility back-flushes those pipes or related filters. Additionally, effluent discharged from the point sources at the facility contains pollutants including but not limited to chlorine, total suspended solids, nitrogen, phosphorous, ammonia, nitrites, nitrates, nutrients, Chlorophyll *a*, Phaeophytin *a*, heat, pH, salinity, dissolved oxygen, biological wastes, metals, food wastes, chemicals used for shellfish larvae rearing or tank cleaning or other purposes, concentrated total suspended solids, antibiotics and drugs and any residue of those materials, and other pollutants including those described in Pacific Seafood’s June 2021 NPDES permit application to the Washington State Department of Ecology.

Discharges of pollutants from the facility are ongoing, illegal, and in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and an effluent standard or limitation under the Clean Water Act, because they are occurring without authorization of an NPDES permit. Pacific Seafood has violated Section 301(a) of the Clean Water Act each and every day since May 25, 2017. These violations are ongoing.

II. PARTY GIVING NOTICE.

The full name, address, and telephone number of the party giving notice is:

Olympic Forest Coalition
P.O. Box 461
Quilcene, Washington 98376
(360) 774-3384

III. ATTORNEYS REPRESENTING OFCO.

The attorneys representing OFCO in this matter are:

Paul Kampmeier
Kampmeier & Knutsen PLLC
811 First Avenue, Suite 468
Seattle, Washington 98104
(206) 858-6983

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
1300 S.E. Stark Street, Suite 202
Portland, Oregon 97214
(503) 841-6515

paul@kampmeierknutsen.com

brian@kampmeierknutsen.com

IV. CONCLUSION.

The violations described and alleged in this notice of intent to sue are ongoing and violate the Clean Water Act. At the conclusion of the 60-day notice period, OFCO intends to file a lawsuit against Pacific Seafoods under the citizen suit provisions of the Clean Water Act, 33 U.S.C. § 1365. Each of the above-described violations subjects the violator to a penalty of up to \$59,973 per day. 40 C.F.R. § 19.4. In addition to civil penalties, OFCO will seek declaratory and injunctive relief to prevent further violations and such other relief as is permitted by law, including recovery of OFCO's litigation expenses, costs, attorneys' fees, and expert witness fees. *See* 33 U.S.C. §§ 1365(a) and (d).

The above-described violations reflect the information currently available to OFCO. OFCO intends to sue for all violations, including those yet to be uncovered, those committed after the date of this Notice of Intent to Sue, and those occurring at any other properties that are owned or operated by Pacific Seafoods and contiguous or adjacent to the facility.

During the 60-day notice period, OFCO will be willing to discuss settlement and effective remedies for the violations described and alleged in this letter. If you wish to pursue settlement discussions in the absence of litigation, we suggest that you initiate discussions within 10 days of receiving this notice so the parties can meet and discuss effective remedies for the violations alleged herein before costs of suit become prohibitive. OFCO does not intend to delay the filing of a complaint if discussions are ongoing when the notice period ends.

Very truly yours,

Kampmeier & Knutsen, PLLC



By: _____
Paul A. Kampmeier

Attorneys for Olympic Forest Coalition

cc: Administrator, U.S. Environmental Protection Agency
Regional Administrator, U.S. Environmental Protection Agency, Region 10
Director, Washington State Department of Ecology
Robert J. Preston, Registered Agent for Dulcich, Incorporated
Unisearch, Incorporated, Registered Agent for Dulcich, Incorporated
Paul Minter, Authorized Representative for Pacific Seafood Group